

SUPREME COURT NO. 83219-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint Petition Of:

RAYMOND MARTINEZ.

Petitioner

CLERK

BY RONALD R. CARPENTER

2010 MAY 28 AM 7:59

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR GRANT COUNTY

PETITIONER'S SUPPLEMENTAL BRIEF

JENNIFER J. SWEIGERT
Attorney for Appellant

NIELSEN, BROMAN & KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENTS OF ERROR</u>	1
<u>Issues Pertaining to Assignments of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	2
1. <u>Procedural Facts</u>	2
2. <u>Substantive Facts</u>	3
C. <u>ARGUMENT</u>	4
1. THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE FIRST DEGREE BURGLARY CONVICTION BECAUSE MARTINEZ’S KNIFE WAS NOT USED AS A DEADLY WEAPON.	4
a. <u>The Definition of “Deadly Weapon” Depends on the Circumstances of Its Use, Attempted Use, or Threatened Use.</u>	5
b. <u>The State Failed to Present Evidence Martinez Used or Attempted to Use the Knife.</u>	7
c. <u>No Reasonable Trier of Fact Could Find Martinez Attempted to Use the Knife Beyond a Reasonable Doubt.</u> ..	10
d. <u>This Court Should Reject Any Argument Based on State v. Gamboa.</u>	11
2. THIS CLAIM IS PROPERLY BEFORE THIS COURT.	12
D. <u>CONCLUSION</u>	14

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

In re Haverty

101 Wn.2d 498, 681 P.2d 835 (1984)..... 14

In re Pers. Restraint of Cook

114 Wn.2d 802, 792 P.2d 506 (1990)..... 13, 14

In re Pers. Restraint of Perkins

143 Wn.2d 261, 19 P.3d 1027 (2001)..... 13

In re Pers. Restraint of Turay

153 Wn.2d 44, 101 P.3d 854 (2004)..... 13

In re Powell

92 Wn.2d 882, 602 P.2d 711 (1979)..... 14

In re Richardson

100 Wn.2d 669, 675 P.2d 209 (1983)..... 13

State v. Carlson

65 Wn. App. 153, 828 P.2d 30 (1992)..... 7, 12

State v. Gamboa

137 Wn. App. 650, 154 P.3d 312 (2007)..... i, 11

State v. Gotcher

52 Wn. App. 350, 759 P.2d 1216 (1988)..... 6, 7, 9, 12

State v. Green

94 Wn.2d 216, 616 P.2d 628 (1980) 4

State v. Lougin

65 Wn. App. 153, 749 P.2d 173 (1988)..... 8

State v. Randle

47 Wn. App. 232, 734 P.2d 51 (1987)..... 9

TABLE OF AUTHORITIES (CONT'D)

Page

<u>State v. Shilling</u> 77 Wn. App. 166, 889 P.2d 948 (1995)	6
--	---

<u>State v. Skenandore</u> 99 Wn. App. 494, 994 P.2d 291 (2000)	9, 12
--	-------

<u>State v. Winings</u> 126 Wn. App. 75, 107 P.3d 141 (2005)	6, 7, 8, 12
---	-------------

FEDERAL CASES

<u>In re Winship</u> 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).	4
---	---

<u>Jackson v. Virginia</u> 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)	4, 10
---	-------

<u>Schlup v. Delo</u> 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995)	4
---	---

<u>Washington v. Recuenco</u> 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006).....	5
---	---

RULES, STATUTES AND OTHER AUTHORITIES

CrR 7.8	2
RAP 16.4	1, 4, 12, 13
RCW 2.06.030	13
RCW 9.94A.030	14
RCW 9A.04.110	2, 5, 6, 9, 11, 12
RCW 9A.52.020	5

TABLE OF AUTHORITIES (CONT'D)

	Page
RCW 10.73.090	13
RCW 10.73.100	13
RCW 10.73.140	13

A. ASSIGNMENTS OF ERROR

1. The evidence presented at trial was insufficient to support a conviction for first-degree burglary.

2. Petitioner is unlawfully restrained.

Issues Pertaining to Assignments of Error

1. To qualify as a deadly weapon and elevate burglary to first degree, a knife must be readily capable of causing death or substantial bodily harm “under the circumstances in which it is used, attempted to be used, or threatened to be used.” Petitioner’s knife was found along the path he took when fleeing the scene of the burglary. Petitioner told police it must have fallen from his belt sheath while he was running. Did the State fail to prove beyond a reasonable doubt that petitioner used, attempted to use, or threatened to use the knife?

2. RAP 16.4 requires that a petitioner be unlawfully restrained and states that the court will not consider a second petition for similar relief. This is petitioner’s second personal restraint petition, raising an issue not considered on direct appeal or in the first petition. He currently stands convicted of first-degree burglary based on insufficient evidence. Is this case properly before this Court?

B. STATEMENT OF THE CASE

1. Procedural Facts

On July 12, 2004, petitioner Raymond Martinez was convicted of first-degree burglary, third-degree malicious mischief, obstructing a law enforcement officer, and resisting arrest and was sentenced to 38 months confinement as well as 18-36 months community custody. Appendix A at 7, 8 (Judgment and Sentence filed 7/12/2004). His judgment and sentence was affirmed on direct appeal in 2006. Appendix E (Court of Appeals unpublished opinion filed 4/13/2006). The Court of Appeals also dismissed a prior personal restraint petition on other grounds. Appendix C (Order Dismissing Personal Restraint Petition filed 5/13/2009).

In March 2009, Martinez filed a pro se motion for relief from judgment under CrR 7.8, which was transferred to the Court of Appeals as a personal restraint petition. App. C at 1. In his motion, Martinez argued the evidence was insufficient to show he used, attempted to use, or threatened to use the knife, and thus the evidence failed to show it was a deadly weapon as defined in RCW 9A.04.110. Appendix B (Motion for Relief from Judgment filed 3/13/2009). The Court of Appeals dismissed Martinez's personal restraint petition as successive and untimely and did not reach the merits. App. C. Still acting pro se, Martinez moved this Court for review of the

order dismissing his petition. Appendix D (Motion for Discretionary Review filed 6/17/2009). On April 1, 2010, this Court granted review.

2. Substantive Facts

Deputies responded to a burglar alarm and arrived to see Martinez flee a remote shop in rural Grant County. RP¹ 57-59, 61-62. The deputies gave chase and caught Martinez after he ran into a barbed wire fence and somersaulted over it in the dark. RP 62. Deputy Wester patted Martinez down and noticed an empty sheath for a knife. RP 65. He asked Martinez where the knife was, and Martinez replied that it must have fallen out while he was running. RP 65. The deputy later retraced his steps and found a knife that Martinez identified as his. RP 66, 70. In the shop, police found a hose to a camper trailer that appeared to have been cut and a previously stolen gas can. RP 154, 159, 182-83, 187.

At trial, the prosecutor argued the sheath contained a button to hold the knife and it would not have fallen out unless either Martinez unlatched it or he was already holding the knife in his hand. RP 244-45. Therefore, he argued, Martinez must have been attempting to use the knife against the pursuing deputies when he dropped it. RP 245, 249, 261-62. On direct appeal, the Court of Appeals found this argument improperly based on facts not in evidence, but declined to reverse because Martinez did not object.

¹ “RP” refers to the verbatim report of proceedings from Martinez’s direct appeal in cause no. 23317-1-III.

App. E at 3. (“[T]here is no evidence that Mr. Martinez reached for the knife, unbuttoned it, removed it. . .”).

C. ARGUMENT

1. THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE FIRST DEGREE BURGLARY CONVICTION BECAUSE MARTINEZ’S KNIFE WAS NOT USED AS A DEADLY WEAPON.

Martinez is unlawfully restrained because his conviction was obtained “in violation of the Constitution of the United States or the Constitution or laws of the State of Washington.” RAP 16.4(c)(2). In every criminal prosecution, due process requires that the State prove every fact necessary to constitute the charged crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). When a defendant challenges the sufficiency of the evidence, the court views the evidence in the light most favorable to the prosecution and inquires whether there was sufficient evidence for a rational trier of fact to find guilt beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) overruled on other grounds by Schlup v. Delo, 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995); State v. Green, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980), overruled on other grounds by Washington v. Recuenco, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466

(2006). Martinez's conviction should be reversed because the State failed to prove the knife was a deadly weapon.

a. The Definition of "Deadly Weapon" Depends on the Circumstances of Its Use, Attempted Use, or Threatened Use.

The State charged Martinez with first-degree burglary under the deadly weapon prong of that offense. RCW 9A.52.020(1)(a). The evidence was insufficient because the State failed to prove he was armed with a deadly weapon as that term is defined for burglary. The burglary statute provides:

A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering or while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon.

RCW 9A.52.020(1). For purposes of this statute, the term "deadly weapon" is defined as:

any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a vehicle as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm.

RCW 9A.04.110(6) (emphasis added).²

² RCW 9A.04.110 has been amended twice since Martinez's conviction in 2004, but the definition of "deadly weapon" has not changed. This brief cites to the current version of the statute.

Under the plain language of this statute, any item other than an explosive or firearm is not a deadly weapon per se.³ State v. Winings, 126 Wn. App. 75, 87-88, 107 P.3d 141 (2005); State v. Gotcher, 52 Wn. App. 350, 353-54, 759 P.2d 1216 (1988). Instead, the jury must determine whether the instrument was a deadly weapon from the circumstances of its use, attempted use, or threatened use. Gotcher, 52 Wn. App. at 354. The “circumstances” include “the intent and present ability of the user, the degree of force, the part of the body to which it was applied and the physical injuries inflicted.” State v. Shilling, 77 Wn. App. 166, 171, 889 P.2d 948 (1995).

In Gotcher, the court held mere possession of a knife was insufficient to render it a deadly weapon, “because it makes a nullity of the ‘used, attempted to be used, or threatened to be used’ language of RCW 9A.04.110(6).” 52 Wn. App. at 354. The court explained, “[I]t must be shown that under the circumstances in which it is *used*, or *attempted* or *threatened* to be used, the weapon is readily capable of causing death or serious bodily injury. Id. (emphasis in original). This requires “some manifestation of a willingness to use the knife before it can be found to be a deadly weapon under RCW 9A.04.110(6).” Id.; see also State v. Carlson, 65

³ RCW 9A.04.110(6) should not be confused with former RCW 9.94A.602 (currently codified as RCW 9.94A.825), which defines “deadly weapon” for purposes of sentencing enhancement following conviction. The latter statute has a far broader list of per se dangerous weapons.

Wn. App. 153, 159 n.7, 828 P.2d 30 (1992) (citing Gotcher for the proposition that “if the weapon is not deadly per se, there must be evidence of intent to use the instrument to do bodily harm.”); Winings, 126 Wn. App. at 87-88 n.6 (“The plain language of this statute . . . refutes the State’s argument that a sword is a deadly weapon per se based on its use throughout history.”).

b. The State Failed to Present Evidence Martinez Used or Attempted to Use the Knife.

It is undisputed Martinez did not actually use the knife. Nor was there any allegation that he threatened to use the knife. Thus, the State’s case rests entirely on the prong of attempted use. But the record is devoid of evidence he attempted to handle the knife in any way during his attempt to flee.⁴

The Gotcher Court ultimately found there was sufficient evidence to find Gotcher used or attempted to use a deadly weapon because (1) he had a switchblade in his right pocket, (2) the safety was off and the blade partially open, (3) the defendant fumbled with something in that right pocket after police ordered him more than once to put his hands on a wall, and (4) a police dog had to be used to subdue him. Gotcher, 52 Wn. App. at 356-57.

⁴ The Court of Appeals recognized this lack of evidence in finding the prosecutor’s closing argument improperly based on facts not in evidence: “[T]here is no evidence that Mr. Martinez reached for the knife, unbuttoned it, removed it, or that he had a good grip on it. . . . The prosecutor’s comments were then improper.” App. E at 3.

In Winings, the evidence was sufficient to support a deadly weapon finding because the defendant waived the sword around and then stabbed the victim in the foot. 126 Wn. App. at 88-89.

There was no similar evidence Martinez attempted to use the knife against a person. When confronted by police, he did not grab for a weapon and stand his ground to fight; he ran. RP 61-62. At any rate, it is unreasonable to assume Martinez would have confronted the deputies (who almost certainly had firearms) armed with only a three-and-a-half to four-inch knife. RP 69. On the contrary, the evidence tends to show Martinez did not intend to confront anyone – the shop at issue here was not an inhabited dwelling or business; it was an isolated farm shop, a mile from the nearest house, and unlikely to be occupied in the middle of the night. RP 58-59, 156.

Moreover, Martinez's explanation that the knife must have fallen out as he ran was undisputed except for the prosecutor's bald assertion during closing argument, which is not evidence. See, e.g., State v. Lougin, 65 Wn. App. 153, 383, 749 P.2d 173 (1988) (trial courts customarily instruct the jury that counsel's arguments are not evidence). Even so, this issue does not hinge on the credibility of Martinez's explanation. The jury was entitled to disbelieve him. It was not entitled to find he attempted to use the knife without proof beyond a reasonable doubt.

The State argues the knife was “more readily available for use” because it was unfastened. Respondent’s Response to Motion for Discretionary Review at 7. But availability is immaterial to the deadly weapon analysis. A person is “armed” when the weapon is readily available for use. Gotcher, 52 Wn. App. at 353 (citing State v. Randle, 47 Wn. App. 232, 235, 734 P.2d 51 (1987)). But Martinez does not dispute he was “armed.” The issue is whether the knife was a deadly weapon, a definition that hinges on use, attempted use, or threatened use, regardless of availability.

Even when a weapon is actually used against a person, courts have found the weapon was not deadly under RCW 9A.04.110(6) when the circumstances of use inhibited the potential for harm. State v. Skenandore, 99 Wn. App. 494, 500-01, 994 P.2d 291 (2000). Skenandore created a homemade spear using writing paper, dental floss, and a golf pencil and assaulted a corrections officer through the porthole of his cell, striking the officer twice in the chest and once on the arm. Id. at 496-97. The trial court concluded this weapon had the potential to put out someone’s eye. Id. at 498.

But because the officer’s eye was nowhere near the port, and there was no evidence Skenandore was aiming for the eye, “the surrounding circumstances inhibited the spear’s otherwise potential, but unproven, ready capability to inflict substantial bodily harm.” Id. at 500. Therefore, the State

failed to prove the spear was a deadly weapon under the circumstances of its use. Id. at 501. Similarly, here, there is no evidence Martinez attempted to use the knife in such a way as to harm the deputy, or even had possession of it at a time when he was nearby. As in Skenandore, the State did not prove Martinez's knife was deadly under the circumstances of its use.

c. No Reasonable Trier of Fact Could Find Martinez Attempted to Use the Knife Beyond a Reasonable Doubt.

The evidence is insufficient where no rational trier of fact could fail to find a reasonable doubt. Jackson, 443 U.S. at 319. The knife and sheath are currently unavailable to examine the truth of the prosecutor's assertions that the sheath contained a button or latch that would have prevented the knife from inadvertently falling out. However, even assuming the truth of this assertion, the evidence was insufficient to prove Martinez attempted to use the knife against the deputies beyond a reasonable doubt.

First, the mere presence of a latch or button closure on the sheath gives no indication of *when* it was unfastened. It may be Martinez routinely carries the knife and never takes the trouble to fasten the sheath because gravity would be sufficient to prevent losing it absent some unforeseen circumstance such as somersaulting over a fence in the dark. This is reasonable doubt. It may be Martinez unlatched the sheath to use the knife to cut the hose to the camper trailer in the shop and neglected to latch it

again. This is reasonable doubt. It may also be Martinez unlatched the sheath to dispose of the knife, so as not to be caught with a weapon. This is also reasonable doubt.

Where the State presented no evidence tending to disprove three entirely reasonable alternative conclusions from the evidence, there is a failure of proof. No reasonable person could conclude beyond a reasonable doubt that Martinez attempted to use the knife against the deputies from the mere existence of a button on the sheath.

d. This Court Should Reject Any Argument Based on State v. Gamboa.

The State may attempt to analogize this case to State v. Gamboa, 137 Wn. App. 650, 154 P.3d 312 (2007), in which a machete was used as a tool to break into a house. This court should reject any such analogy first because the Gamboa court ignored the plain language of the statutory definition of “deadly weapon” in holding the mere availability and potential for harm was sufficient. Id. at 653.

Under RCW 9A.04.110(6), the weapon must be readily capable of causing death or substantial bodily harm “under the circumstances in which it was used, attempted to be used or threatened to be used.” Nevertheless, the Gamboa court separated this definition into two unrelated elements, and held that the weapon was deadly because it was used and was inherently

capable of inflicting the necessary harm. 137 Wn. App. at 653. The court declared, “It is the potential as a weapon and not how the machete was actually used that is important.” Id.

But this statement directly conflicts with the plain language of the statutory definition, which depends on the circumstances of use, attempted use, or threatened use. RCW 9A.04.110(6). It also directly conflicts with this Court’s decisions in Gotcher, Carlson, and Winings, *supra*. The mere fact that a weapon is capable of causing death or substantial bodily harm is insufficient to show it is a deadly weapon under RCW 9A.04.110. It must have had that capability under the specific circumstances of its use or attempted use in the case at hand. Gotcher, 52 Wn. App. at 354; Skenandore, 99 Wn. App. at 500-01; RCW 9A.04.110(6). The mere fact that Martinez’s knife can cause death or substantial bodily harm, without evidence of the circumstances of attempted use, does not render it a deadly weapon.

2. THIS CLAIM IS PROPERLY BEFORE THIS COURT.

Although this is not Martinez’s first personal restraint petition, the issue he now raises is properly before this Court because he has not previously requested similar relief. See RAP 16.4(d) (“No more than one petition for similar relief on behalf of the same petitioner will be entertained without good cause shown.”). “Similar relief” means the same

grounds for relief or same issues. In re Pers. Restraint of Cook, 114 Wn.2d 802, 806-07, 792 P.2d 506 (1990). Martinez's 2007 personal restraint petition did not raise this issue; therefore, the current petition is not a petition for similar relief. App. C at 3.

RCW 10.73.140's bar on successive petitions does not apply to personal restraint petitions in the Supreme Court. RAP 16.4(d); RCW 10.73.140; In re Pers. Restraint of Turay, 153 Wn.2d 44, 49, 101 P.3d 854 (2004). The proper course of conduct with a successive petition in the Court of Appeals is to transfer it to the Supreme Court. RCW 2.06.030; In re Pers. Restraint of Perkins, 143 Wn.2d 261, 266-67, 19 P.3d 1027 (2001). Additionally, the one-year time limit of RCW 10.73.090 does not apply because Martinez proceeded to trial and the sole claim raised is the sufficiency of the evidence. RCW 10.73.100 (4); App. B.

The record is unclear whether Martinez is currently incarcerated on this charge.⁵ However, even if Martinez has entirely served his sentence, the Washington Supreme Court has made it clear that the presence of an unlawful conviction that serves as a "serious blot" on an individual's record satisfies the restraint requirement of RAP 16.4(b). In re Richardson, 100 Wn.2d 669, 670, 675 P.2d 209 (1983). Such a "blot" is considered restraint because of its associated stigma and "potential effect

⁵ He was sentenced to 38 months confinement in 2004. App. A at 8. He is currently confined at Airway Heights Corrections Center.

on future minimum sentences and actual time served.” In re Powell, 92 Wn.2d 882, 887-88, 602 P.2d 711 (1979). The potential future effect is enormous in this case because first-degree burglary is a class A felony, and therefore is a “most serious offense” under the persistent offender accountability act. RCW 9.94A.030(29), (34).

Because Martinez’s claim is constitutional, to prevail he need only demonstrate prejudice, rather than a complete miscarriage of justice -- the requisite standard for most collateral claims. Cook, 114 Wn.2d at 813; In re Haverty, 101 Wn.2d 498, 504, 681 P.2d 835 (1984). Martinez is unlawfully restrained and continues to suffer prejudice because he remains under the sentence and stigma of an invalid conviction for a class A violent felony and “most serious offense.”

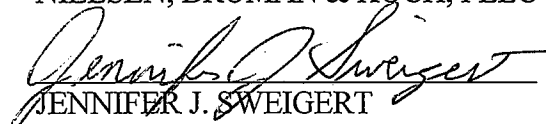
D. CONCLUSION

This Court should reverse Martinez’s first-degree burglary conviction because it is not supported by sufficient evidence.

DATED this 26th day of May, 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC


JENNIFER J. SWEIGERT
WSBA No. 38068
Office ID No. 91051
Attorney for Appellant

Appendix A

FILED

MAR 30 2009

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____



04-004201

FILED
KENNETH O. KUNES, CLERK
BY _____ DEPUTY

JUL 12 2004

RECORDED IN _____
VOLUME _____ PAGE _____

JUDGMENT #

04-0-00980-6

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

RAYMOND (NMI) MARTINEZ,

Defendant.

SID# WA18510064; DOB 08-17-72

AGENCY: GCSO 04-GS01566

No. 04-1-00158-0

279499

JUDGMENT AND SENTENCE (JS)

☒ Prison [] RCW 9.94A.712 Prison
Confinement

83219-6

[] Clerk's action required, para 4.1 & 5.8

I. HEARING

- 1.1 A sentencing hearing was held present were:
Defendant: RAYMOND (NMI) MARTINEZ
Defendant's Lawyer: Randy W. Smith
(Deputy) Prosecuting Attorney: Albert Lin

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

- 2.1 CURRENT OFFENSE(S): The defendant was found guilty on April 9, 2004 by JURY TRIAL

COUNT	CRIME with RCW	CRIME DATE
1	Burglary in the First Degree, RCW 9A.52.020(1)(a)	2-17-04
3	Malicious Mischief in the Third Degree, RCW 9A.48.090(1)	2-17-04
4	Obstructing a Law Enforcement Officer, RCW 9A.76.020(1)	2-17-04
5	Resisting Arrest, RCW 9A.76.040(1)	2-17-04

JUDGMENT AND SENTENCE (JS)(Prison)
(RCW 9.94A.500, .505.)(WPF CR 84.0400 (6/2002))

as charged in the (Amended) X Information.

- ☐ The court finds that the defendant is subject to sentencing under RCW 9.94A.712.
- ☐ A special verdict/finding for use of **firearm** was returned on Count(s) _ RCW 9.94A.609, .510
- ☐ A special verdict/finding for use of **deadly weapon other than a firearm** was returned on Count(s) _ RCW 9.94A.602, .510
- ☐ A special verdict/finding of **sexual motivation** was returned on Count(s) _ RCW 9.94A.835
- ☐ A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s) __, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- ☐ A special verdict/finding that the defendant committed a crime involving the manufacture of methamphetamine **when a juvenile was present in or upon the premises of manufacture** was returned on Count(s) . RCW 9.94A.605, RC W 69.500.401(a), RCW 69.50.440.
- ☐ The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030
- ☐ This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130
- ☐ The court finds that the offender has a **chemical dependency that has contributed to the offense(s)**. RCW 9.94A.607
- ☐ The crime charged in Count(s) involve(s) **domestic violence**.
- ☐ Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.589):

CURRENT OFFENSES ENCOMPASSING

- ☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

OTHER CURRENT OFFENSES USED IN CALCULATING OFFENDER SCORE

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

	CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J	TYPE OF CRIME
1	Robbery Second Degree	5-11-99	Grant County, 99-1-00094-6	10-30-98	A	V
2	VUCSA: Attempted Possession of Heroin	6-25-00	Grant County, 00-1-00268-1	5-5-00	A	NV

- ☐ The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525
- ☐ The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.525):

PRIOR CONVICTIONS ENCOMPASSING

- ☐ The following prior convictions are not counted as points but as enhancements pursuant to RCW 46.61.520:

PRIOR CONVICTIONS COUNTED AS ENHANCEMENTS

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE(not including enhancements)	PLUS ENHANCEMENT *	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM
1	3	VII	31-41 MONTHS		31-41 MONTHS	LIFE IMPRISONMENT
3	GROSS MISC	GROSS MISC	GROSS MISC		GROSS MISC	1 YEAR
4	GROSS MISC	GROSS MISC	GROSS MISC		GROSS MISC	1 YEAR
5	MISC	MISC	MISC		MISC	90 DAYS

*(F) Firearm, (D) Other deadly weapons, (V)VUCSA in protected zone, (VH) Veh. Hom, Sec RCW 46.61.520, (JP) Juvenile .Present

2.4 ☐ EXCEPTIONAL SENTENCE. Substantial and compelling reasons exist which justify an exceptional sentence
☐ above ☐ within ☐ below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753
☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows: **THE STATE RESERVES RECOMMENDATION.**

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 ☐ The Court DISMISSES Counts N/A

☒ The defendant is found NOT GUILTY of:

Count 2: Theft in the First Degree

Count 6: Possession Stolen Property First Degree

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

\$ Restitution to: RTN/RJN

\$ Restitution to:

\$ Restitution to:

(Name and Address—address may be withheld and provided confidentially to Clerk's Office).

\$500.00 Victim assessment RCW 7.68.035

\$ DNA Test Fee, RCW 43.43.754

\$241.40 Court costs, including RCW 9.94A.760, 9.94A.505,

10.01.160

Criminal filing fee \$110.00

Witness costs \$

Sheriff service fees \$131.40

Jury demand fee \$

Extradition costs \$

FRC

WFR

SFR/SFS/SFW/SRF

JFR

EXT

CRC

Other \$

\$ 500 Fees for court appointed attorney RCW 9.94A.760 PUB

\$ Court appointed defense expert and other defense costs RCW 9.94A.760 WFR

\$ Fine RCW 9A.20.021 [] VUCSA chapter 69.50 RCW, [] VUCSA additional fine deferred due to indigency RCW 69.50.430 FCM/MTH

\$ VUCSA additional fine [] deferred due to indigency RCW 69.50.430 FCM/MTH

\$ Drug enforcement fund of _____ RCW 9.94A.760 CDF/LDI/PCD

\$ Crime lab fee [] suspended due to indigency RCW 43.43.690 CLF NTF/SAD/SDI

\$ \$3,000 Meth/amphetamine Cleanup Fine RCW 69.50.440 or 69.50.401 MTH

\$ Felony DNA collection fee [] not imposed due to hardship RCW 43.43. (Ch. 289 L 2002 § 4).

\$ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum) RCW 38.52.430

\$ Other costs for: _____

\$ 1241.40 TOTAL RCW 9.94A.760

- [] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.142. A restitution hearing:
- [] shall be set by the prosecutor
- [] is scheduled for _____
- [] RESTITUTION. Schedule attached.

- [] Restitution ordered above shall be paid jointly and severally (if adjudicated) with:

NAME of other defendant	CAUSE NO.	(VICTIM NAME)	(AMOUNT)

RJN

- [] The Department of Corrections (DOC) may immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602

All payments shall be made in accordance with the policies of the clerk and on a schedule established by DOC, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____. RCW 9.94A.760

- [] In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.760

- [] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190

☐ The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160

4.2 DNA TESTING. The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

☐ HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340

4.3 The defendant RAYMOND (NMI) MARTINEZ shall not have contact with _____ (name, DOB), including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence).

☐ Domestic Violence Protection Order or Anti Harassment Order is filed with this Judgment and Sentence.

4.4 OTHER: _____

☐ The following firearm(s) shall be forfeited pursuant to RCW 9.41.098: _____

☐ _____

4.5 CONFINEMENT OVER ONE YEAR. The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.589. Defendant is sentenced to the following term of total

confinement in the custody of the Department of Corrections (DOC):

<u>38</u>	months on Count	<u>1</u>	months on Count
_____	months on Count	_____	months on Count
_____	months on Count	_____	months on Count

Actual number of months of total confinement ordered is: _____
(Add mandatory firearm and deadly weapons enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data, above).

All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm or other deadly weapon as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.589

Confinement shall commence immediately unless otherwise set forth here: _____

- (b) CONFINEMENT. RCW 9.94A.712: The defendant is sentenced to the following term of confinement in the custody of the DOC:

Count _____	minimum term _____	maximum term _____
Count _____	minimum term _____	maximum term _____

- (c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

- 4.6 ☐ COMMUNITY PLACEMENT is ordered as follows: Count _____ for _____ months; Count _____ for _____ months; Count _____ for _____ months;
☐ COMMUNITY CUSTODY for count(s) _____, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence.

☒ COMMUNITY CUSTODY is ordered as follows:

Count 1 for a range from 18 to 36 months;
Count _____ for a range from _____ to _____ months;
Count _____ for a range from _____ to _____ months;

or for a period of earned early release awarded pursuant to RCW 9.94A.728(1) and (2), which ever is longer, and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding, Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000 See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. Use paragraph 4.7 to impose community custody following work ethic camp.]

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution; (3) not consume controlled substances except pursuant to lawfully issued prescriptions; (4) not unlawfully possess controlled substances while in community custody; (5) pay supervision fees as determined by DOC; (6) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

☐ The defendant shall not consume any alcohol.

☐ Defendant shall have no contact with: _____

☐ Defendant shall remain ☐ within ☐ outside of a specified geographical boundary, to wit: _____

☐ The defendant shall participate in the following crime related treatment or counseling services: _____

☐ The defendant shall undergo an evaluation for treatment for ☐ domestic violence ☐ substance abuse ☐ mental health ☐ anger management and fully comply with all recommended treatment.

☐ The defendant shall comply with the following crime-related prohibitions: _____

Other conditions: defendant shall pay all court-ordered legal financial obligations; _____

☐ For sentences imposed under RCW 9.94A.712, other conditions may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than 7

working days.

4.7 [] **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

SENTENCE AND ORDER AS TO GROSS MISDEMEANOR - MISDEMEANOR

IT IS FURTHER ORDERED:

4.9 Defendant is sentenced by imprisonment in the Grant County jail

for a period of 365 days, with 365 days suspended for 2 years on good behavior of the defendant as to Count 3. (SEE APPENDIX G, if applicable)

for a period of 365 days, with 365 days suspended for 2 years on good behavior of the defendant as to Count 4.

for a period of 90 days, with 90 days suspended for 2 years on good behavior of the defendant as to Count 5.

☐ the terms in counts _____ are concurrent/consecutive
[] with each other [] with counts _____ sentenced herein
[] with Cause No. _____

☐ the terms in counts _____ are concurrent/consecutive
[] with each other [] with counts _____ sentenced herein
[] with Cause No. _____

☐ the terms in counts _____ are concurrent/consecutive
[] with each other [] with counts _____ sentenced herein
[] with Cause No. _____

The defendant shall receive credit, against the sentence stated above, for early release time, if any, earned by the defendant pursuant to the policies of the Grant County jail.

GROSS MISDEMEANOR MONETARY ASSESSMENTS:

4.10 Defendant shall pay a fine of \$ _____, with \$ _____ suspended for _____ years.

4.11 **CONDITIONS FOR SUSPENSION ON GROSS MISDEMEANOR(S):**

[] SUPERVISION

Defendant shall be supervised by the Department of Corrections, Division of Community Corrections, for _____ months pursuant to the rules and regulations of the Department of Corrections, Division of Community Supervision. Defendant shall report to the Community Corrections Office at 229 First Avenue NW, Ephrata, Washington, immediately or upon release from custody.

[] (a) The offender shall not use, possess or deliver any controlled substance, except by valid prescription.

[] (b) Defendant shall not consume alcohol in Grant County, Washington.

[] (c) _____

[] (d) Defendant shall appear for review hearing as to the gross-misdemeanor(s) on _____

In the event of any violation of these conditions, all or any portion of the suspended portions of sentence may be imposed.

V. NOTICES AND SIGNATURES

5.1 COLLATERAL ATTACK ON JUDGMENT. Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090

5.2 LENGTH OF SUPERVISION. For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period of up to 10 years from the date of the sentence or release from confinement, which ever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. For an offense committed all on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the

obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5).

5.3 NOTICE OF INCOME-WITHHOLDING ACTION. If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606

5.4 RESTITUTION HEARING.

☐ Defendant waives any right to be present at any restitution hearing (sign initials): _____

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.634

5.6 FIREARMS. You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

Cross off if not applicable:

5.7 SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex or kidnapping offense involving a minor as defined in RCW 9A.44.130 (e.g., kidnapping in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW where the victim is a minor and you are not the minor's parent), you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.

If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry out a vocation in Washington, or attend school in Washington, you must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.

If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send written notice of your change of residence to the sheriff of your new county of residence

at least 14 days before moving, register with that sheriff within 24 hours of moving and you must give written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington state, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington state.

If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier.

Even if you lack a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody or within 14 days after ceasing to have a fixed residence. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report in person to the sheriff of the county where you are registered on a weekly basis if you have been classified as a risk level II or III, or on a monthly basis if you have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

5.8 [] The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 OTHER: _____

DONE in Open Court and in the presence of the defendant this date: July 12, 2004.

John Antosz
JOHN ANTOSZ, JUDGE

Albert Lin
Albert Lin, WSBA# 28066
(Deputy) Prosecuting Attorney

Randy W. Smith
Randy W. Smith, WSBA#
29950 Attorney for Defendant

RAYMOND (NMI)
MARTINEZ, Defendant

Translator signature/Print name: _____

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

CAUSE NUMBER of this case:

04-1-00158-0

I, KENNETH O. KUNES, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action, now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: APRIL _____, 2004. Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. WA18510064

(If no SID take fingerprint card for State Patrol)

Date of Birth 08-17-72

FBI No. 438565HA8

Local ID No. 53007

PCN No. 925489263

Other _____

Alias name, SSN, DOB: David Ortiz, Richard Henry Martinez

Race:

☐ Asian/Pacific
Islander

☐ Black/African-
American

☐ Caucasian

Ethnicity:

☐ Hispanic

Sex:

☐ Male

☐ Native American

☐ Other: _____

☐ Non-
Hispanic

☐ Female

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto.

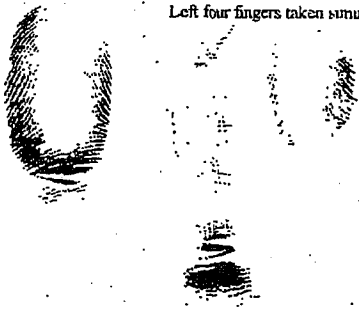



Clerk of the Court by:

A. Speltine-Knighten

Deputy Clerk. Dated: APRIL 12, 2004

DEFENDANT'S SIGNATURE: _____

(Def refused to sign) ASK

Left four fingers taken simultaneously	Left Thumb	Right Thumb	Right four fingers taken simultaneously
			

STATE OF WASHINGTON)

County of Grant)

) ss.

WARRANT OF COMMITMENT

THE STATE OF WASHINGTON, To the sheriff of Grant County and to the superintendent and officers in charge of the Washington State Correctional Institution at Shelton, Washington.

WHEREAS RAYMOND (NMI) MARTINEZ has been duly convicted in the Superior Court of the State of Washington, for said county, of the crime(s) of

COUNT	CRIME with RCW	CRIME DATE
1	Burglary in the First Degree, RCW 9A.52.020(1)(a)	2-17-04
3	Malicious Mischief in the Third Degree, RCW 9A.48.090(1)	2-17-04
4	Obstructing a Law Enforcement Officer, RCW 9A.76.020(1)	2-17-04
5	Resisting Arrest, RCW 9A.76.040(1)	2-17-04

and judgment has been pronounced against said defendant, and the Court having decreed that the defendant be punished by classification, confinement and placement in such correctional facility under the supervision of the Department of Corrections, Adult Corrections Division, as said department shall deem appropriate, pursuant to RCW 72.13.120, all of which appears of record.

NOW, THIS IS TO COMMAND YOU, The said sheriff, that you take and deliver the defendant to the proper officers of said institution; and this is to command you, the superintendent and officers in charge of said institution, to receive the said defendant and to confine said defendant at hard labor in said institution as provided by law for the aforesaid term and until such costs are paid, secured, or disposed of as by law provided, and these presents are your authority for the same, HEREIN FAIL NOT.

WITNESS THE HONORABLE JOHN ANTOSZ, Judge of Grant County Superior Court, and the seal thereof, this 12 day of ~~APRIL~~ *July*, 2004.

KENNETH O. KUNES
Clerk of the Superior Court

By:

H. Spurline-Knight
Deputy Clerk

ACKNOWLEDGMENT OF ADVICE OF RIGHT TO APPEAL AND TIME LIMIT FOR FILING COLLATERAL ATTACK

The court has entered the Judgment and Sentence to which this form is attached. The undersigned, counsel for the defendant or the defendant, and a qualified or certified interpreter'(where applicable) acknowledge that the defendant has read or heard, and has acknowledged understanding, the following rights:

RIGHTS REGARDING APPEAL

If the defendant was convicted after trial and upon the defendant's plea of not guilty, or if the defendant was sentenced to a term outside the standard range for confinement, as provided in chapter 9.94A RCW:

1. The defendant has the right to appeal to the Court of Appeals.
2. Unless a notice of appeal is filed with the clerk of this court within thirty (30) days from the entry of the Judgment and Sentence, the right to appeal will be forever lost.
3. The defendant has the right to be represented by a lawyer for the purposes of appeal, including preparation and filing of the notice of appeal. If the defendant cannot afford to hire a lawyer, the court will appoint a lawyer to represent the defendant at public expense.
4. The defendant has the right to have those parts of the trial record necessary for appeal prepared at public expense if the defendant cannot afford to pay for such preparation.

TIME LIMITS FOR COLLATERAL ATTACK

5. No petition or motion for relief from the Judgment and Sentence may be filed after one (1) year has elapsed from the time the Judgment and Sentence becomes final.

The Judgment and Sentence becomes final on the last of the following dates:

- a. when it is filed with the clerk of this court;
 - b. after a direct appeal (see rights above), when an appellate court issues its mandate disposing of such appeal,
 - c. when the United States Supreme Court denies a timely petition for certiorari to review a decision upholding the defendant's conviction on appeal. Filing a motion to reconsider denial of certiorari does not prevent the Judgment and Sentence from becoming final.
6. The time limit stated above does not apply to a petition or motion based solely on one or more of the following grounds:
 - a. newly discovered evidence, if the defendant acted with due diligence in discovering the evidence and filing the petition or motion;

- b. that the statute the defendant is convicted of violating was unconstitutional on its face or as applied to the defendant's conduct;
- c. the conviction was barred by double jeopardy, under Amendment V to the United States Constitution or Article 1, Section 9 of the Washington State Constitution
- d. the defendant pled not guilty and the evidence introduced at trial was insufficient to support the conviction;
- e. the sentence imposed was in excess of the court's jurisdiction;
- f. there has been a significant change in the law, whether substantive or procedural, which is material to the conviction, sentence or other order entered in a criminal or civil proceeding instituted by the state or local government, and either (1) the legislature has expressly provided that the change in the law is to be applied retroactively, or (2) a court, in interpreting a change in the law that lacks such an express legislative intent, determines that sufficient reasons exist to require retroactive application of the changed legal standard.

DEFENDANT'S ACKNOWLEDGMENT

I HAVE READ, OR HAVE HAD READ TO ME, THE FOREGOING STATEMENT; I UNDERSTAND THE RIGHTS ENUMERATED ABOVE AND ACKNOWLEDGE MY RECEIPT OF A COPY OF THESE RIGHTS.

Date: _____

DEFENDANT

DEFENSE COUNSEL'S CERTIFICATION

I CERTIFY, AS DEFENDANT'S COUNSEL OF RECORD, THAT THE DEFENDANT HAS READ, OR HAS HAD READ TO HIM/HER, AND HAS ACKNOWLEDGED TO ME HIS/HER UNDERSTANDING OF, THE FOREGOING STATEMENT.

Date: _____

DEFENSE COUNSEL

INTERPRETER'S CERTIFICATION

I AM CERTIFIED, OR HAVE BEEN FOUND BY THE COURT TO BE QUALIFIED, AS AN INTERPRETER IN THE _____ LANGUAGE, AND I HAVE TRANSLATED THE FOREGOING STATEMENT OF RIGHTS AND DEFENDANT'S ACKNOWLEDGMENT INTO THAT LANGUAGE TO THE DEFENDANT. THE DEFENDANT HAS ACKNOWLEDGED THAT HE/SHE UNDERSTANDS BOTH THE TRANSLATION AND THE SUBJECT MATTER OF THIS DOCUMENT. I CERTIFY, UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON, THAT THE FOREGOING IS TRUE AND CORRECT.

Date: _____

INTERPRETER

SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

STATE OF WASHINGTON,

Plaintiff,

v

RAYMOND (NMI) MARTINEZ,

Defendant.

No. 04-1-00158-0

JUDGMENT AND SENTENCE
(FELONY) - APPENDIX H
COMMUNITY PLACEMENT

The court having found the defendant guilty of offense (s) qualifying for community placement, it is further ordered as set forth below:

4.5 COMMUNITY PLACEMENT: Defendant additionally is sentenced on convictions herein, for each sex offense and serious violent offense committed on or after July 1 1990 to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A. 150 (1) and (2) whichever is longer and on conviction herein for an offense categorized as a sex offense or serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.1254 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, to a one-year term of community placement.

Community Placement is to begin either upon completion of the term of confinement or at such time as the defendant is transferred to community custody in lieu of early release.

a) Defendant shall comply with the following conditions during the term of community placement:

1. Report to, and be available for contact with the assigned community corrections officer as directed;
2. Work at Department of Corrections-approved education, employment, and/or community service;
3. Not consume controlled substances except pursuant to lawfully issued prescriptions;
4. While in community custody not unlawfully possess controlled substances;
5. Pay community placement fees as determined by the Department of Corrections
6. Receive prior approval for living arrangements and residence location; and
7. Defendant shall not own, use, or possess a firearm or ammunitions.

The following conditions listed under 4.5 (a) are hereby waived by the court:

b) Defendant shall comply with the following additional conditions during the term of community placement:

Date: _____

JUDGE GRANT COUNTY SUPERIOR COURT

Appendix B

REBECCA CHURCH

FILED

MAR 13 2009

KIMBERLY A. ALLEN
Grant County Clerk



07-162751

SUPERIOR COURT FOR WASHINGTON IN THE COUNTY OF GRANT

STATE OF WASHINGTON
Plaintiff,

CASE No. 04-1-00158-0

V.

MOTION FOR RELIEF FROM:
JUDGMENT AND ORDER
UNDER CrR Rule 7.8

RAYMOND MARTINEZ
Defendant,

83219-6

I. MOTION

COMES NOW, the defendant, Raymond Martinez, Pro se and moves the Court for a Motion for relief from Judgment and Order Under CrR Rule 7.8(b)(1)(2)(3)(4)(5), and is not barred by RCW 10.73.090, .100. STATE v. SMITH, 144 Wn.App. 860 (2008)

II. AFFIDAVIT OF TRUTH

I, Raymond Martinez, declare under penalty of perjury under the law of the State of Washington that the foregoing is true and correct to the best of my personal knowledge.

III. RELIEF SOUGHT

The defendant seeks a reversal and dismissal of conviction Under CrR Rule 7.8(a)(1)(2)(3)(4)(5).

1 IV ISSUES

2 Assignment of Error No. 1: The Trial Court's failure to properly
3 define deadly weapon, in 1st degree burglary violated RCW 9A.04.
110(6), and XIV Amendment of the United States Constitution.

4 (1) Defendant was improperly charged with first degree burglary.

5 V FACTS RELEVANT TO MOTION

6 On approximately February 17, 2004, in the morning hours, the Grant
7 County Sheriffs Deputies responded to a silent alarm call. Upon arrival
8 the defendant apparantly was running out of the building. Grant County
9 Deputies were involved in a short foot chase. Deputies tackled and placed
10 defendant, Raymond Martinez, in handcuffs and placed him in a marked
11 vehicle. After further investigation Deputies retraced the steps of the
12 pursuit and discovered a knife that fit the sheath that defendant had
13 on his belt.

14 According to Sheriff Deputies Trial Courtroom testimonie, defendant
15 had been subdued, in handcuffs and placed in back of a patrol vehicle. At
16 which time, officer's then discovered through investigation, a knife
17 which was recovered in the defendant's flight path, after apprehension.

18
19 VI ARGUMENT

20 The defendant states that the charge of first degree burglary Under
21 RCW 9A.52.020(1), does not fit the elements of what is considered to be
22 a deadly weapon in his case and circumstances of events.

23 In Gotcher, Courts held:

24 "We reject the State's position, that possession of a switchblade
25 knife alone is a sufficient circumstance of use to render the knife a
26 deadly weapon, because it makes a nullity of the "used, attempted to be
used, or threatened to be used" language of RCW 9A.04.110(6). A switch-
blade knife falls within the second ~~Hall~~ classification and is therefore

1 not per se a deadly weapon. Hence, there must be some manifestation of
2 willingness to use the knife before it can be found to be a deadly weapon
under RCW 9A.04.110(6)." . . .

3 "we cannot know whether the jury applied the proper law in finding
4 Gotcher guilty of first degree burglary. Hence, we cannot be confident
that Gotcher received a fair trial. We conclude that the error was
prejudicial."

5 STATE v. GOTCHER, 52 Wn.App. 350, 354, 356 759 P.2d 1216 (1988)

6
7 Martinez's case is the same as in the case of Gotcher, because as
8 in Gotcher, "the statute defining first degree burglary, RCW 9A.52.020(1),
9 provides:

10 "A person is guilty of burglary in the first degree if, with intent
11 to commit a crime against a person or property therein, he enters
or remains unlawfully in a dwelling and if, in entering or while
12 in the dwelling or in immediate flight therefrom, the actor or
another participant in the crime (a) is armed with a deadly weapon,
13 or (b) assaults any person therein."

14 "The term "armed" in the statute means that the weapon is readily
15 accessible and available for use."

16 "The term "deadly weapon" is defined in former RCW 9A.04.110(6)
as follows:

17 "Deadly weapon" means any explosive or loaded or unloaded
18 firearm, and shall include any other weapon, device, instrument,
article, or substance, including a "vehicle" as defined in this
19 section, which, under the circumstances in which it is used,
attempted to be used, or threatened to be used, is readily capable
20 of causing death or serious bodily injury[.]"

21 STATE v. GOTCHER, 52 Wn.App. 350, 353, 354-56, 759 P.2d 1216 (1988)

22 See also. Likewise, as in Gotcher, Martinez's case is same in that Martinez
23 had been placed in the back seat of a police car, then officers located
a knife along the path of the short foot pursuit prior to arrest:

24 It would have been impossible for Martinez to use, attempt to use, or
25 threaten to use the recovered knife that was located after the fact and
26 found a great distance from the back seat of the police car.

1 In Befford, Court held:

2 "at page 510 that to be armed defendant must possess the item considered
3 a deadly weapon in such a manner as to indicate his willingness or present
4 ability to use it as a weapon. . . The rationale of the befford court was
5 that under their statute, Ariz. Rev. Stat. Ann. § 13-105(7), which defines
6 dangerous instrument as "anything that under the circumstances in which it
7 is used, . . . is readily capable of causing death or serious physical
8 injury"

9 STATE v. BEFFORD, 148 Ariz. 508-10, 715 P.2d 761 (1986)

10 Here again, as in the case of Befford, Martinez's case is the same
11 because Martinez indicated no willingness or present ability to use the
12 knife that was found later on after arrest and placement into a marked
13 vehicle.

14 In Sabala, Courts held:

15 "a person is "armed" if a weapon is "easily accessible and readily
16 available for use by the defendant for either offensive or defensive
17 purposes."

18 STATE v. SABALA, 44 W.App. 444, 723 P.2d 5 (1986)

19 Finally, Martinez's case argument is similar if not stronger than
20 the case of Sabala, because unlike Sabala, or even Befford, or Gotcher,
21 Martinez was not only seated in the back seat of a police car when Deputies
22 discovered and recovered a knife, but Martinez was hand cuffed. It would
23 be completely unreasonable for his jury, had they been properly instructed
24 on the definition of "armed with a deadly weapon" to have ever convict this
25 person with first degree burglary.

26 Martinez could not have imposed any danger whatsoever to sheriff
deputies or any one else because he could not use, attempt to use, or
threaten to use, a knife that was not accessible while handcuffed in a car.

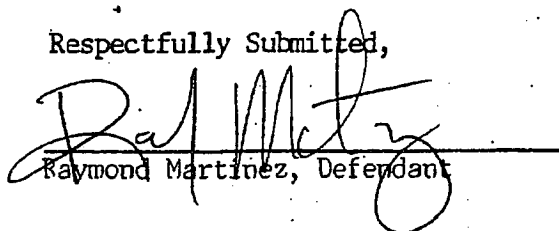
VII. CONCLUSION AND RELIEF SOUGHT

For the reasons put forth above, the petitioner respectfully requests that this Court grant his motion, and award any and all relief as provided for by law.

In addition, the petitioner respectfully requests that this Court Order a Motion and Order for Note to Docket the Criminal Calendar for any necessary future hearing requiring the presents of the defendant. Further, defendant request an Order for Transport ~~for any and all future hearings on this matter be granted and issued.~~

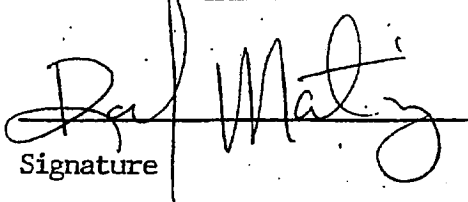
Furthermore, the petitioner respectfully requests that this Court appoint counsel to argue any issues.

Respectfully Submitted,


Raymond Martinez, Defendant

I, Raymond Martinez, hereby swear under penalty of perjury of the laws of the State of Washington, that I have read the contents of the above Motion, and it is true and correct to the best of my knowledge.

signed this 11 day of MARCH, 2009.


Signature

Appendix C

FILED

MAY 13 2009

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

**In the Matter of the Personal Restraint
of:**

27949-9-III

RAYMOND MARTINEZ,

Petitioner.

**ORDER DISMISSING PERSONAL
RESTRAINT PETITION**

83219-6

Raymond Martinez seeks relief from personal restraint imposed in his 2004 Grant County conviction of first degree burglary, third degree malicious mischief, obstructing a law enforcement officer, and resisting arrest. On appeal, this court affirmed on all counts except the third degree malicious mischief, which it reduced to a misdemeanor. *State v. Martinez*, 2006 WL 954047 (Wash. App. Div. 3). This court dismissed his first personal restraint petition in August 2007. *See In re Pers. Restraint of Martinez*, Order Dismissing Personal Restraint Petition, No. 25942-1-III (certificate of finality filed 9/10/07). Mr. Martinez filed a CrR 7.8 motion for relief from judgment in Grant County Superior Court on March 13, 2009. The motion was transferred to this court for consideration as a personal restraint petition. CrR 7.8(c)(2).

In this, his second personal restraint petition, Mr. Martinez contends the evidence is insufficient to show that he was armed with a deadly weapon as required in the charge of first degree burglary. His petition is both untimely and successive.

A petition filed more than one year after the judgment and sentence is untimely under RCW 10.73.090(1) unless the judgment and sentence is invalid on its face, the court lacked competent jurisdiction over the matter, or the petition is based solely on one or more of the exceptions set forth in RCW 10.73.100(1) – (6). These exceptions include: (1) the petitioner has newly discovered evidence; (2) the conviction statute was unconstitutional; (3) the conviction violated double jeopardy; (4) the petitioner pleaded not guilty and the evidence was insufficient to support conviction; (5) the sentence exceeded the court's jurisdiction; or (6) there was a significant intervening change in the law material to the conviction or sentence. RCW 10.73.100.

Mr. Martinez filed this petition more than one year after the certificate of finality on his prior petition. His judgment and sentence is valid on its face and he does not challenge the jurisdiction of the court or argue that any RCW 10.73.100 exceptions apply.

Moreover, under RCW 10.73.140, this court lacks jurisdiction to consider a successive petition that raises issues that were or could have been raised in a prior petition unless the petitioner shows good cause why he did not raise these issues before. *In re Pers. Restraint of VanDelft*, 158 Wn.2d 731, 737-38, 147 P.3d 573 (2006). To establish good cause, the petitioner must show that an objective impediment external to

No. 27949-9-III
PRP of Martinez

the defense prevented him from raising the issues earlier. *State v. Crumpton*, 90 Wn. App. 297, 302-03, 952 P.2d 1100 (1998) (analogizing to the definition of good cause in RCW 10.95.040(2)). Mr. Martinez offers no explanation why he did not raise the deadly weapon issue on appeal or in the first petition.

Because the court does not have jurisdiction to consider this successive, untimely petition, it is dismissed. *VanDelft*, 158 Wn.2d at 737-38; RCW 10.73.090; RAP 16.11(b). The court also denies his request for appointment of counsel. *In re Pers. Restraint of Gentry*, 137 Wn.2d 378, 390, 972 P.2d 1250 (1999); RCW 10.73.150.

DATED: May 13, 2009

KEVIN M. KORSMO
ACTING CHIEF JUDGE

Appendix D

83219-6

No. Ct. App. No. 279499

Trial Ct. No. 04-1-00158-0

THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

RAYMOND MARTINEZ, Petitioner,

MOTION FOR DISCRETIONARY REVIEW

RAYMOND MARTINEZ

[Name of petitioner]

#795914, LA-59

Airway Heights Corr. Ctr.

P.O. BOX 2049

Airway Heights, WA 99001
[Address]

CLERK
2009 JUN 17 AM 8:00
du E

A. Identity of Petitioner

Raymond Martinez, [Name] asks this court to accept review of the decision designated in Part B of this motion.

B. Decision

[Statement of the decision or parts of decision petitioner wants reviewed, the court entering or filing the decision, the date entered or filed, and the date and a description of any order granting or denying motions made after the decision such as a motion for reconsideration.]

Please review Court of Appeals Statement of "Because the court does not have jurisdiction to consider this successive, untimely petition, it is dismissed." filed May 13, 2009. Order stating instructions for review of that Order may only be obtained by filing a "Motion for Discretionary Review" in the Washington Supreme Court in the above referenced case.

Also, please review statement of "under 10.73.140, this court lacks jurisdiction to consider a success petition that raises issues that were or could have been raised in a prior petition unless the petitioner shows good cause why he did not raise these issues before."

_____ A copy of the decision [and trial court memorandum opinion] is in the Appendix.

C. Issues Presented for Review

[Define the issues which the court is asked to decide if review is granted.]

Does Petitioner meet the requirements of RCW 10.73.100 (1)(2), and (4)?

Does Petitioner show good cause why he did not raise these issues before? The issue of deadly weapon that is.

Is Petitioner's Petition both untimely and successive?

D. Statement of the Case

[The statement should be brief and contain only material relevant to the motion.]

Petitioner, Raymond Martinez, moves this court for granting his motion for relief from judgment and sentence under CrR Rule 7.8(c)(2) and is not barred according to RCW 10.73.100, STATE v. GOLDEN, 112 Wn.App 68, 47 P.3d 587.

Further, Since Petitioner was not represented by an attorney for his first personal restraint petition, he could not be held to the successive petition rule while his second petition show good cause by newly discovered evidence that could not be raised in either direct appeal or the first Petition because the Petitioner is and has been untrained in the law and is not a lawyer. The issue now raise in this second Petition could not have been discovered even with diligent efforts sooner.

PERSONAL RESTRAINT OF PERKINS, 143 Wn.2d 261, 19 P.3d 1027 (2001)

E. Argument Why Review Should Be Accepted

[The argument should be short and concise and supported by authority.] (Please see PRP)

Petitioner's reveiw should be accepted because he clearly meets the exception under RCW 10.73.100(1)(2)&(4). Starting with No. (1) In Petitioner's eye's, it is newly discovered evidence, that the definition of "armed with a deadly weapon" within first degree burglary has a standard requirement to meet in order to establish the true definition of the meaning to be a first degree burglary. (2) The conviction statute was unconstitution when the defendant was charged and tried by a jury that was never given any instruction at all regarding the correct and true definition of "armed with a deadly weapon" as used in the first degree burglary charge he was dealt. This failure to instruction violated the Defendant's Right to Due Process. XIV Amendment, US CONST. (3) The STATE'S failure to provide Defendant Due Process on this issue, essentially, and clearly establishes insufficient evidence by lack of
F. Conclusion proper information causing prejudice towards Defendant and
[State the relief sought if review is granted.] consequently causing an unfair trial and verdict.

I Raymond Martinez, Pro se Petitioner, pray that the wisdom of this Court will honor the relief respectfully due under all related statutes, rules, and laws of authority to do so, under the State of Washington, and/or the United States Constitution.

DATED this 11th day of JUNE, 2009.

Respectfully submitted,


Petitioner

APPENDIX

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



May 13, 2009

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>

COPY

Raymond Martinez
#795914
PO Box 2049
Airway Heights, WA 99001

CASE # 279499
Personal Restraint Petition of Raymond Martinez
GRANT COUNTY SUPERIOR COURT No. 041001580

Dear Mr. Martinez:

Enclosed is a copy of the Order Dismissing Personal Restraint Petition filed by this Court today in the above-referenced case.

In accordance with RAP 16.14(c) and RAP 13.5(a), (b) and (c), review of this Order may be obtained only by filing a Motion for Discretionary Review in the Washington State Supreme Court within 30 days after the filing of this Order. A copy must be filed with the Court of Appeals.

The address for the Washington State Supreme Court is Temple of Justice, P. O. Box 40929, Olympia, WA 98504-0929.

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:slh
Enclosure

c: Honorable John Antosz

FILED

JUN 16 2009

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By JS

No. Ct. App. No. 279499

Trial Ct. No. 04-1-00158-0

THE SUPREME COURT
OF THE STATE OF WASHINGTON

83219-4

STATE OF WASHINGTON, Respondent,

v.

RAYMOND MARTINEZ, Petitioner,

MOTION FOR DISCRETIONARY REVIEW

RAYMOND MARTINEZ

[Name of petitioner]

#795914, LA-59

Airway Heights Corr. Ctr.

P.O. BOX 2049

Airway Heights, WA 99001
[Address]

A. Identity of Petitioner

Raymond Martinez, [Name] asks this court to accept review of the decision designated in Part B of this motion.

B. Decision

[Statement of the decision or parts of decision petitioner wants reviewed, the court entering or filing the decision, the date entered or filed, and the date and a description of any order granting or denying motions made after the decision such as a motion for reconsideration.]

Please review Court of Appeals Statement of "Because the court does not have jurisdiction to consider this successive, untimely petition, it is dismissed." filed May 13, 2009. Order stating instructions for review of that Order may only be obtained by filing a "Motion for Discretionary Review" in the Washington Supreme Court in the above referenced case.

Also, please review statement of "under 10.73.140, this court lacks jurisdiction to consider a successive petition that raises issues that were or could have been raised in a prior petition unless the petitioner shows good cause why he did not raise these issues before."

_____ A copy of the decision [and trial court memorandum opinion] is in the Appendix.

C. Issues Presented for Review

[Define the issues which the court is asked to decide if review is granted.]

Does Petitioner meet the requirements of RCW 10.73.100 (1)(2), and (4)?

Does Petitioner show good cause why he did not raise these issues before? The issue of deadly weapon that is.

Is Petitioner's Petition both untimely and successive?

D. Statement of the Case

[The statement should be brief and contain only material relevant to the motion.]

Petitioner, Raymond Martinez, moves this court for granting his motion for relief from judgment and sentence under CrR Rule 7.8(c)(2) and is not barred according to RCW 10.73.100, STATE v. GOLDEN, 112 Wn.App 68, 47 P.3d 587.

Further, Since Petitioner was not represented by an attorney for his first personal restraint petition, he could not be held to the successive petition rule while his second petition show good cause by newly discovered evidence that could not be raised in either direct appeal or the first Petition because the Petitioner is and has been untrained in the law and is not a lawyer. The issue now raise in this second Petition could not have been discovered even with diligent efforts sooner.

PERSONAL RESTRAINT OF PERKINS, 143 Wn.2d 261, 19 P.3d 1027 (2001)

E. Argument Why Review Should Be Accepted

[The argument should be short and concise and supported by authority.] (Please see PRP)

Petitioner's reveiw should be accepted because he clearly meets the exception under RCW 10.73.100(1)(2)&(4). Starting with No. (1) In Petitioner's eye's, it is newly discovered evidence, that the definition of "armed with a deadly weapon" within first degree burglary has a standard requirement to meet in order to establish the true definition of the meaning to be a first degree burglary. (2) The conviction statute was unconstitutional when the defendant was charged and tried by a jury that was never given any instruction at all regarding the correct and true definition of "armed with a deadly weapon" as used in the first degree burglary charge he was dealt. This failure to instruction violated the Defendant's Right to Due Process. XIV Amendment, US CONST. (3) The STATE'S failure to provide Defendant Due Process on this issue,

F. Conclusion

essentially, and clearly establishes insufficient evidence by lack of proper information causing prejudice towards Defendant and [State the relief sought if review is granted.] consequently causing an unfair trial and verdict.

I Raymond Martinez, Pro se Petitioner, pray that the wisdom of this Court will honor the relief respectfully due under all related statutes, rules, and laws of authority to do so, under the State of Washington, and/or the United States Constitution.

DATED this 11th day of JUNE, 2009.

Respectfully submitted


Petitioner

APPENDIX

May 13, 2009
Filing fee waived.
Gene S. Townsley
Clerk

FILED
APR 30 2009
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By SA

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

RAYMOND MARTINEZ,

Petitioner's Full Name

)
) Ct. App. # 279499
) Trial Crt # 04-1-00158-0
) NO. _____
) AMENDMENT TO
) PERSONAL RESTRAINT PETITION

83219-6

If there is not enough room on this form, use the back of these pages or use other paper. Fill out all of the form and other papers you are attaching before you sign this form in front of a notary.

A. STATUS OF PETITIONER

I, RAYMOND MARTINEZ, located at Airway Heights Correction Center, P.O.
(Full name and current address)
Box 2049, Airway Heights, WA 99001-2049

Apply for relief from confinement. I am X am not _____ now in custody serving a sentence upon conviction of a crime. (If not serving a sentence upon conviction of a crime) I am now in custody because of the following type of court order: re-commitment
(Identify type of court order)

1. The court in which I was sentenced is: GRANT COUNTY SUPERIOR COURT

2. I was convicted of the crime of: First Degree Burglary

3. I was sentenced after (check one) Trial X Plea of Guilty _____ on July 12, 2004
Date of Sentence

The Judge who imposed sentence was Honorable John Antosz

4. My lawyer at trial court was Attorney Randy Smith
Name and Address if known

5. I did X did not _____ appeal from the decision of the trial court. (If the answer is that I did), I appealed to: Court of Appeals: Division III

Name of court or courts to which appeal took place

My lawyer for my appeal was: Attorney Janet Gemberling "NONE"
Name and address if known or write "none"

The decision of the appellate court was N/A was not N/A published. (If the answer is that it was published, and I have this information) the decision is published in N/A

6. Since my conviction I have X have not _____ asked a court for some relief from my sentence other than I have already written above. (If the answer is that I have asked, the court I asked was Division III. Relief was denied on
Name of court

Year 2007.

Date of Decision or, if more than one, all dates)

7. (If I have answered in question 6 that I did ask for relief), the name of my lawyer in the proceeding mentioned in my answer to question 6 was N/A

8. If the answers to the above questions do not really tell about the proceedings and the courts, judges and attorneys involved in your case, tell about it here: N/A

B. GROUNDS FOR RELIEF:

(If I claim more than one reason for relief from confinement, I will attach sheets for each reason separately, in the same way as the first one. The attached sheets should be numbered "First Ground", "Second Ground", "Third Ground", etc). I claim that I have _____ reason(s) for this court to grant me relief from the conviction and sentence described in Part A.

_____ Ground
(First, Second, etc)

1. I should be given a new trial or released from confinement because (State legal reasons why you think there was some error made in your case which gives you the right to a new trial or release from confinement): These reasons are stated and supported in my 7.8

motion. please refer to my motion.

2. The following facts are important when considering my case. (After each fact statement put the name of the person or persona who know the fact and will support your statement of the fact. If the fact is already in the record of your case, indicate that also) _____

See STATE v. SABALA 44 Wn. App. 444, 723 P.2d 5(1986) also in my 7.8

motion. see STATE v. GOTCHER, 52 Wn. App. 350, 354, 356, 759 P.2d 1216
(1988), STATE v. BEFFORD, 148 Ariz. 508-10, 715 P.2d 761 (1986), also in 7.8

3. The following reported court decisions (indicate citations if possible) in cases similar to mine show the error I believed happened in my case. (If none are known, state "None Known"). _____

Please see my 7.8 motion

4. The following statutes and constitutional provisions should be considered by the court. (If none are now, state, "None Known") _____

Section violated include: RCW 9A.04.110(6), and VI and XIV Amendment of
the United States Constitution. Also, included in my 7.8 motion.

5. This petition is the best way I know to get the relief I want, and not other way will work as well because: I am following the Rule's set forth by and through CrR Rules, GR
Rules, CR Rules, RAP Rules, and Washington State and United States Constitution.

C. STATEMENT OF FINANCES

If you cannot afford to pay the filing fee or cannot afford to pay an attorney to help you, fill this out. If you have enough money for these things, do not fill out this part of the form.

1. I do do not ask the court to file this without making me pay the filing fee because I am so poor I cannot pay the fee.

2. I have a spendable balance of \$ 0 in my prison or institution account.

3. I do do not ask the court to appoint a lawyer for me because I am so poor I cannot afford to pay a lawyer. **Please appoint counsel**, per CrR Rule: 3.1(b)(2) and STATE V. ROBINSON, 153 Wn.2d 689, 692, 700-05, 107 P.3d 90(2005)

4. I am am not employed. My salary or wages amount to \$ 0 a month. My employer is _____

(name and address)

5. During the past 12 months I did _____ did not ✓ get any money from a business, profession or other form of self-employment. (If I did, it was _____ and the total income I got was \$ 0.)
(kind of self-employment)

6. During the past 12 months, I

_____ did not get any rent payments. If so, the total amount I got was \$ 0

_____ N/A get any interest. If so, the total amount I got was \$ 0

_____ N/A get any dividends. If so, the total amount I got was \$ 0

_____ N/A get any other money. If so, the amount of money I got was \$ 0

7. _____ N/A have any cash except as said in answer 2. If so, the total amount of cash I have is \$ 0

_____ N/A have any savings accounts or checking accounts. If so, the amount in all accounts is \$ 0

_____ N/A own stocks, bonds, or notes. If so, their total value is \$ 0

8. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what each item of property is worth and how much you owe on it. Do not list household furniture and furnishings and clothing which you or your family need.

Items	Value
	<u>0</u>
	<u>0</u>
	<u>0</u>
	<u>0</u>

9. I am ___ am not ☒ married. If I am married, my wife or husband's name and address is _____

10. All of the persons who need me to support them are listed here.

Name and Address Relationship Age

AS A RESULT OF MY INCARCERATION. I NO LONGER
HAVE CONTACT WITH MY CHILDREN.

11. All the bills I owe are listed here.

Name of creditor Address Amount

you owe money to

COUNTY LEGAL FINANCIAL OBLIGATIONS, AMMOUNT
UNKNOWN.

E. OATH OF PETITIONER

THE STATE OF WASHINGTON)

County of SPOKANE)

ss.

After being first duly sworn, on oath, I depose and say That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

[sign here]



DEPOSED AND SWORN to before me this 16 day of APRIL.

Rachael Shoemaker
Notary Public in and for the State
of Washington, residing at SPOKANE

If a notary is not available, explain why none is available and indicate who can be contacted to help you find a notary: _____

Then sign below:

I declare that I have examined this petition and to the best of my knowledge and belief it is true and correct.

_____[date].

[sign here]

I. MOTION

COMES NOW, the defendant, Raymond Martinez, Pro se and moves the court for Motion for relief from Judgment and Sentence under CrR Rule 7.8(C)(2) barred by RCW 10.73.090, STATE v. SMITH, 144 Wn.App 860 (2008)

II. AFFIDAVIT OF TRUTH

I Raymond Martinez, declare under penalty of perjury under the Laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

III. RELIEF SOUGHT

The defendant seeks a reversal and dismissal of conviction under Section V. and VI. of this motion

IV. ISSUES

Assignment of error's No. 1: The trial court's failure to properly define deadly weapon in first degree burglary violated RCW 9A.04.110 (6), VI & XIV Amendment of the United States Constitution.

(1) Defendant was improperly charged with first degree burglary.

V. FACTS RELEVANT TO MOTION

This case went to jury trial on approximately July 2004, verdict was entered in approximately July 2004, sentencing occurred approximately August 2004, direct appeal filed approximately immediately after sentencing and denied approximately two years later. Also, an initial PRP was filed and denied within approximately one year after the denial of direct appeal.

On approximately February 17, 2004, in the morning hours, the Grant County Sheriffs Deputies responded to a silent alarm call. Upon arrival the defendant apparently was running out of the structure. Grant County Deputies were involved in a short foot chase. Deputies tackled

and placed defendant, Raymond Martinez, in handcuffs and placed him in a marked vehicle. After further investigation, Deputies retraced the steps of the foot pursuit and discovered for the first time a knife that appeared to fit a sheath that defendant had on his belt.

According to Sheriff's Deputies trial courtroom testimony, defendant had been subdued, in handcuffs, and placed in back of a marked patrol vehicle. At which time, Officer's then discovered through investigation, a knife which was found in the path in which the defendant had taken flight, after apprehension.

VI. ARGUMENT

The defendant states that the charge of first degree burglary under RCW 9A.52.020(1), does not fit the elements of what is considered to be a deadly weapon in his case and circumstances of events.

In Gotcher, Courts held:

"We reject the State's position, that possession of a **switchblade knife** alone is a sufficient circumstance of use to render the knife a deadly weapon, because it makes a nullity of the "**used, attempted to be used, or threatened to be used**" language of RCW 9A.04.110(6). A switchblade knife falls within the **second hall** classification and is therefore not per se a deadly weapon. Hence, there must be some manifestation of willingness to use the knife before it can be found to be a deadly weapon under RCW 9A.04.110(6)." . . .

"We cannot know whether the jury applied the proper law in finding Gotcher guilty of first degree burglary. Hence, we cannot be confident that Gotcher received a fair trial. We conclude that the error was prejudicial.

STATE v. GOTCHER, 52 Wn. App. 350, 354, 356, 759 P.2d 1216 (1988)

Martinez's case is the same as in the case of Gotcher, because "we cannot know whether the jury applied the proper law in finding Martinez guilty of first degree burglary. Hence, we cannot be confident that Martinez received a fair trial. This would conclude that the error was prejudicial toward Martinez receiving a fair trial."

"the statute defining first degree burglary, RCW 9A.52.020(1) provides:

"A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a dwelling and if, in entering or while in the dwelling or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person therein."

The term "armed" in the statute means that the weapon is readily accessible and available for use." Hence, Martinez was not armed as the alleged weapon was not readily accessible and available for use.

"The term "deadly weapon" is defined in former RCW as follows:

"Deadly weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a "vehicle" as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious bodily injury[.]"

STATE v. GOTCHER, 52 Wn. App. 350, 353-56 759 P.2d 1216 (1988)

Likewise, as in Gotcher, Martinez's case is the same as in Gotcher, because as interpreted by the Court in Gotcher, Martinez did not meet the requirement as defined under "deadly weapon," which, under the circumstances Martinez did not use, attempt to be used, or threaten to be used, or was not readily capable of causing death or serious bodily injury to anyone.

Certainly, this would include any threat upon any officer involved, as the knife in the case of Martinez was discovered and located after the fact, and found a great distance from where Martinez was seated in the back seat of a police vehicle.

In Befford, Court held:

"that to be armed defendant must possess the item considered a deadly weapon in such a manner as to indicate his willingness or present a ability to use it as a weapon. . . The rationale of the befford court was that under their statute, Ariz. Rev. Stat. Ann. § 13-105(7), which defines dangerous instrument as "anything that under the circumstances in which it is used, . . . is readily capable of causing death or serious physical injury"

STATE v. BEFFORD, 148 Ariz. 508-10, 715 P.2d 761 (1986)

Again, Martinez's case is very similiar to the Befford case, because as in Befford, the Court ruled in Befford that in order for the defendant to be armed, the **defendant must posses the item considered a deadly weapon** in such a manner as to indicate his willingness or present ability to use it as a weapon, and in the case of Martinez, their never existed any of the requirements for defendant (Martinez), as he did not, and never did posses the item considered a deadly weapon in such a manner, or any manner, as to indicate his willingness or present ability to use it as a weapon.

Moreover, the knife found, was discovered approximately thirty (30) minutes after Martinez was placed into the back seat of a marked police vehicle.

In SABALA Courts held:

"a person is **"armed"** if a weapon is **"easily accessible and readily available for use by defendant for either offensive or defensive purposes."**

STATE v. SABALA, 44 Wn. App. 444 723 P.2d 5 (1986)

Martinez's case is the same as in Sabala, because as in Sabala, the Court's interpretation of "a person is **"armed"** if a weapon is "easily accessible and readily available for use by defendant for either offensive or defensive purposes," and in the case of Martinez, he was never **"armed" with a knife**, or weapon of any kind "easily accessible and readily available for use by defendant for either offensive or defensive purposes." Sabala, Id. at 444

VII. CONCLUSION

Conclusively, Martinez's case arguement is similiar, if not much stronger than the case's of Sabala, Befford, and even Gotcher, because unlike either of the aforementioned case's, Martinez was not only seated in the back of a police vehicle when Deputies discovered a knife a half

hour after apprehension and placement into the back of police vehicle, a more compelling argument in Martinez's favor is the fact that he was already handcuffed and in an impossible position to impose any sort of accessible, readily, willingness, present ability to use, attempt to use, or even threaten to use the alledged deadly (knife) weapon.

Martinez argues, without proper jury instruction on the correct definition of "armed" with a "deadly weapon" as used in RCW 9A.52.020(1) First Degree Burglary; it would be completely unreasonable to be confident that Martinez recieved a fair jury trial. Furthermore, would conclude that this type of serious aggrevated trial court error was prejudicial toward Martinez receiving the fair trial "guaranteed," Martinez, "by the Sixth Amendment of the United States Constitution." Strickland v. Washington, 466 U.S. 688, 80 L.Ed 2d 674, 104 S. Ct 2054 (1984)

Prior to arrest, a knife was never an issue and was never a threat during the short foot pursuit as Martinez was being chased by officer's, and finally, could have never imposed any harm upon officer's when discovered approximately thirty (30) minutes after Martinez was handcuffed and place in the back seat of a marked police vehicle.

VIII. RELIEF SOUGHT

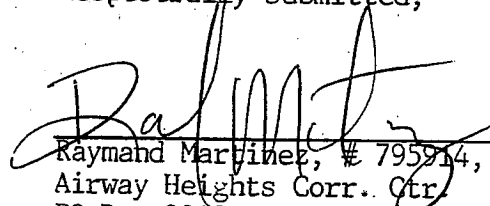
For the reasons put forth above, the Petitioner respectfully request that this court grant his motion, and award any and all relief as provided for by law.

In addition, the Petitioner respectfully request that this court respond promptly regarding confirmation of this motion along with answer to fee waiver and requested court appointed counsel to help defendant with representing this motion for relief.

I Raymand Martinez, hereby swear under the penalty of perjury
of the Laws of the State of Washington, that I have read the contents of
the above motion, and it is true and correct to the best of my knowledge.

Signed this 22 day of April 2009.

Respectfully Submitted,


Raymand Martinez, # 795914, LA-59
Airway Heights Corr. Ctr.
PO Box 2049
Airway Heights, WA 99001-2049

Appendix E

Westlaw.

Not Reported in P.3d

Not Reported in P.3d, 132 Wash.App. 1031, 2006 WL 954047 (Wash.App. Div. 3)

(Cite as: 2006 WL 954047 (Wash.App. Div. 3))

Page 1

NOTE: UNPUBLISHED OPINION, SEE RCWA
2.06.040

Court of Appeals of Washington,
Division 3.
STATE of Washington, Respondent,
v.
Raymond (NMI) MARTINEZ, Appellant.
No. 23317-1-III.

April 13, 2006.

Appeal from Superior Court of Grant County; Hon.
John Michael Antosz, J.
Julia Anne Dooris, Janet G. Gemberling, Gemberling Dooris & Ladich PS, Spokane, WA, for Appellant.

Teresa Jeanne Chen, Albert H. Lin, Grant County
Prosecutors Office Law & Justice Center, Ephrata,
WA, for Respondent.

UNPUBLISHED OPINION

SWEENEY, C.J.

*1 This appeal follows convictions for a number of crimes following a burglary of a shop. The court failed to instruct the jury on the dollar value necessary to convict of the gross misdemeanor. We therefore reverse the conviction for gross misdemeanor malicious mischief in the third degree and remand for entry of a judgment of guilty for misdemeanor malicious mischief. But we reject Mr. Martinez's claim of prosecutorial misconduct—a claim he raises for the first time here on appeal. We therefore affirm his remaining convictions for burglary in the first degree, obstructing a law enforcement officer, and resisting arrest.

FACTS

Raymond Martinez burglarized a shop in rural Grant County. Deputies responded and caught him, but only after he tried to flee.

Deputy Joseph Wester patted down Mr. Martinez. Mr. Martinez wore blue latex gloves and had an empty knife sheath on his belt. Deputy Wester asked Mr. Martinez where the knife was. Mr. Martinez told him 'it should be in the sheath and that it must have fallen out while he was running.' Report of Proceedings (RP) (Vol.1) at 65. Deputy Wester looked for the knife. He found it 'in the dirt right along the path {they} had run.' RP (Vol.1) at 66. The knife had a fixed blade, three-and-one-half to four inches long.

The State charged Mr. Martinez by an amended information with: (count 1) burglary in the first degree, (count 2) theft in the first degree, (count 3) gross misdemeanor malicious mischief in the third degree, (count 4) obstructing a law enforcement officer, (count 5) resisting arrest, and (count 6) possessing stolen property in the first degree. A jury found him guilty of counts one, three, four, and five. Mr. Martinez appeals.

DISCUSSION

Both Mr. Martinez and the State agree that the court failed to instruct the jury on a necessary element of gross misdemeanor malicious mischief—that the value of the property exceeded \$50. They disagree, however, on the proper remedy. Mr. Martinez says the proper remedy is reversal. The State argues that the proper remedy is to remand for entry of a judgment of guilty of simple misdemeanor third degree malicious mischief, which does not require proof of a dollar amount.

Our review is de novo. *State v. Mills*, 154 Wn.2d 1,

Not Reported in P.3d

Not Reported in P.3d, 132 Wash.App. 1031, 2006 WL 954047 (Wash.App. Div. 3)

(Cite as: 2006 WL 954047 (Wash.App. Div. 3))

Page 2

7, 109 P.3d 415 (2005). We may remand a case with an instruction to convict an individual of a lesser offense if "the jury necessarily found each element of the lesser ... offense beyond a reasonable doubt." *State v. Hughes*, 118 Wn.App. 713, 731, 733-34, 77 P.3d 681 (2003) (quoting *State v. Gamble*, 118 Wn.App. 332, 336, 72 P.3d 1139 (2003), *aff'd in part, rev'd in part on other grounds*, 154 Wn.2d 457, 114 P.3d 646 (2005)).

A person commits the crime of malicious mischief in the third degree if he 'knowingly and maliciously causes physical damage to the property of another, under circumstances not amounting to malicious mischief in the first or second degree.' RCW 9A.48.090(1)(a). Malicious mischief in the third degree is a misdemeanor if the property damage is \$50 or less. RCW 9A.48.090(2)(b). It is a gross misdemeanor if the damage exceeds \$50. RCW 9A.48.090(2)(a).

*2 Here, the front door of the shop 'was forced open and ajar just a bit.' RP (Vol.1) at 60. The lock had been cut with bolt cutters and the hasp on the door was broken. The deputies heard noise inside the building. Deputy Wester saw Mr. Martinez flee the building.

The boxes and cupboards inside the camp trailer (parked inside the shop) had been emptied on the floor. A hose on the trailer had also been cut.

The elements for misdemeanor and gross misdemeanor malicious mischief in the third degree are identical except for the dollar value of the property damage. RCW 9A.48.090. Monetary value is not an essential element for misdemeanor malicious mischief. RCW 9A.48.090(2)(b); *State v. Tinker*, 155 Wn.2d 219, 222-23, 118 P.3d 885 (2005) (indicating that value is not an essential element of a crime unless it represents a minimum threshold value that must be met). The instruction here correctly shows the necessary elements for the crime of misdemeanor malicious mischief.

Clerk's Papers at 149; RCW 9A.48.090. The jury, then, necessarily found each of these elements when it convicted Mr. Martinez of gross misdemeanor malicious mischief.

We then reverse his conviction for gross misdemeanor malicious mischief in the third degree and remand and instruct the court to enter a judgment of guilty for misdemeanor malicious mischief in the third degree. *Hughes*, 118 Wn.App. at 731, 733-34.

Mr. Martinez next complains that the prosecutor misstated the evidence, misled the jury during closing arguments, and made an inflammatory statement that Mr. Martinez was a would-be murderer. And none of this is supported by any evidence. The State responds that it argued reasonable inferences from the evidence. The dispute centers on the potential inference from Mr. Martinez's empty knife sheath.

Legally sufficient prosecutorial misconduct requires both a showing of misconduct and prejudice. *State v. Dhaliwal*, 150 Wn.2d 559, 578, 79 P.3d 432 (2003). And, of course, a defendant must object at trial unless the comments are 'so flagrant and ill-intentioned' that the resulting prejudice could not have been cured by an instruction to the jury. *Id.* Here are the comments Mr. Martinez assigns error to:

The defendant on this date and time was in the process of using this knife. As you can see, and you'll have the opportunity to view this knife, this knife has a button and it has to be unbuttoned in order to come out. This is the knife that was there on February 17th, 2004. As you can see, it is sharp. It is deadly. The defendant was in the process of pulling it out. He was wearing what's been identified as Plaintiff's Exhibit 14, these blue latex hospital gloves. He possibly had a very good grip considering he was using these hospital gloves.

Not Reported in P.3d

Not Reported in P.3d, 132 Wash.App. 1031, 2006 WL 954047 (Wash.App. Div. 3)

(Cite as: 2006 WL 954047 (Wash.App. Div. 3))

Page 3

So in the process the defendant had to unsnap this button and then take this knife out. Fortunately for Officer Wester this knife fell on the floor or on the ground. Because if it had not, we wouldn't be talking about Joe Wester as being one person testifying in this case, we might have a coroner testifying about Joe Wester being dead.

*3 RP (Vol.2) at 244-45 (emphasis added).

A fair summary of the evidence here is that Mr. Martinez ran from Deputy Wester. He ran into a barbed wire fence. He fell to the ground, got up, and continued to run. Deputy Wester tackled him. Mr. Martinez struggled. Deputy Greg Hutchison handcuffed Mr. Martinez. Deputy Wester patted down Mr. Martinez. He found the empty knife sheath on his belt. Deputy Wester asked where the knife was. Mr. Martinez told him 'it should be in the sheath and that it must have fallen out while he was running.' RP (Vol.1) at 65. Deputy Wester did not see Mr. Martinez drop anything as he ran. But he retraced their path and found the knife 'in the dirt right along the path {they} had run.' RP (Vol.1) at 66.

It may have been reasonable to infer that Mr. Martinez would use the knife if it had been available. But there is no evidence that Mr. Martinez reached for the knife, unbuttoned it, removed it, or that he had a good grip on it. There is also no direct evidence that Mr. Martinez would have used the knife to kill Deputy Wester. *Dhaliwal*, 150 Wn.2d at 577. The prosecutor's comments were then improper. *Id.* But the question is whether they are 'so flagrant and ill-intentioned' that any prejudice could not have been cured by an instruction to the jury. *Id.* at 578. And we conclude that they are not. The comment was not 'a deliberate appeal to the jury's passion and prejudice' or an attempt to create a sense of revulsion. *State v. Russell*, 125 Wn.2d 24, 89, 882 P.2d 747 (1994). Overreaching? Yes, but not to the extent that the case should be tried again.

The conviction for gross misdemeanor malicious mischief in the third degree is reversed; we remand for entry of a judgment of guilty of misdemeanor malicious mischief in the third degree. We affirm the convictions for burglary in the first degree, obstructing a law enforcement officer, and resisting arrest.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

WE CONCUR: KATO and BROWN, JJ.

Wash.App. Div. 3, 2006.

State v. Martinez

Not Reported in P.3d, 132 Wash.App. 1031, 2006 WL 954047 (Wash.App. Div. 3)

END OF DOCUMENT

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Personal Restraint of:)	
)	
)	SUPREME COURT NO. 83219-6
RAYMOND MARTINEZ,)	
)	
)	
Petitioner.)	
)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 27TH DAY OF MAY, 2010 I CAUSED A TRUE AND CORRECT COPY OF THE **PETITIONER'S SUPPLEMENTAL BRIEF** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] DOUGLAS MITCHELL
GRANT COUNTY PROSECUTOR'S OFFICE
P.O. BOX 37
EPHRATA, WA 98823-0037

- [X] RAYMOND MARTINEZ
DOC NO. 795914
AIRWAY HEIGHTS CORRECTIONS CENTER
P.O. BOX 2049
AIRWAY HEIGHTS, WA 99001

SIGNED IN SEATTLE WASHINGTON, THIS 27TH DAY OF MAY, 2010.

x *Patrick Mayovsky*